

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1962

No. 78

CHESTER A. PEARLMAN, TRUSTEE,

Petitioner,

vs.

RELIANCE INSURANCE COMPANY.

**MOTION FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF**

DAVID MOROGLAS,

Applicant,

521 Fifth Avenue,

New York City, New York.

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*To the Honorable Supreme Court of the
United States:*

Consent to the filing of an Amicus Curiae Brief by your Applicant, DAVID MORGULAS, having been refused by Appellant, Applicant respectfully files this motion for leave to file an Amicus Curiae Brief herein.

The Nature of Applicant's Interest

Applicant has been retained by the Association of Casualty and Surety Companies, a non profit trade association consisting of one hundred thirty-six capital stock companies, most of which write fidelity and surety bonds in almost every State, and in connection with public works contracts and other surety bond requirements of the United States of America. The member companies of the Association write at least eighty-five percent of the annual premium volume of surety bonds written throughout the United States.

A decision against the surety by this Court in this case will have a profound bearing upon the long standing underwriting concepts and practices of the Association's member companies and as a necessary consequence, on the number of bidders qualified by them on Federal Public Works contracts.

Reasons Why Applicant Should Be Allowed to File an Amicus Curiae Brief

Your Applicant believes that if he is allowed to file an Amicus Curiae Brief, the economic and historical genesis of the sureties' rights and the exact nature of these rights will be more fully presented. Inasmuch as the rights which a surety has historically enjoyed stem from its relationship to the formal parties to Public Works contracts and to labor and material suppliers, your Applicant feels that it would be most advantageous if the Court had before it a full analysis of the workings of the construction industry, the creation and nature of the fund sought by both parties in the instant case, and particularly the effects which the position taken by the Ninth Circuit, if supported by this Court, would have upon the surety industry, the construction industry and the costs of Federal Public Works construction.

If sureties are deprived of their long recognized rights of salvage or reimbursement vis-a-vis general creditors of a bankrupt contractor (represented by a Trustee in Bankruptcy) there is a likelihood that present premium rates for surety bonds on Federal Public Works contracts will prove to be inadequate and will have to be revised, thereby increasing the cost of such public works construction to the United States. Furthermore, a general tightening up of

underwriting procedures will be necessitated with the result that many potential bidders on United States Public Works projects will be unable to qualify for suretyship, thereby diminishing the number of available bidders with a consequent increase in bid prices. This narrowing of the base of bidders will run counter to the policy of Congress as implemented by the Small Business Administration to increase the number of potential bidders on Government contracts by encouraging awards thereof to "small business".

WHEREFORE, Appellant prays that he be granted permission to file an Amicus Curiae Brief herein.

DAVID MORGULAS
David Morgulas
Applicant

M. CARL LEVINE, MORGULAS & FOREMAN
521 Fifth Avenue
New York 17, New York
Of Counsel

I hereby certify that I have served a copy of the foregoing motion on Honorable Raymond T. Miles, 942 Ellicott Square Building, Buffalo 3, New York, Appellant's counsel of record, and Honorable Mark N. Turner, 440 M & T Building, Main and Swan Streets, Buffalo 2, New York, Appellee's counsel of record, by depositing on July 20, 1962, a copy of same in a United States mail box with air mail postage prepaid, addressed to each of the above named counsel of record at the post office address set forth above.

DAVID MORGULAS
David Morgulas
Applicant